

UNIVERSITY OF NOTRE DAME,)
)
Plaintiff,)
)
vs.)
)
KATHLEEN SEBELIUS, in her official)
capacity as Secretary, United States)
Department of Health and Human Services,)
et al.,)
)
Defendants.)

**OPINION AND ORDER DENYING PLAINTIFF’S MOTION
FOR PRELIMINARY INJUNCTION PENDING APPEAL**

On Friday, December 20, 2013, I entered an order denying Notre Dame's motion for a preliminary injunction against enforcement of the part of the Affordable Care Act that requires employers to provide employees with health insurance that covers contraceptive services. (DE 40.) Within an hour, Notre Dame had filed its notice of interlocutory appeal pursuant to 28 U.S.C. § 1292(a)(1) and a motion for a preliminary injunction pending appeal. (DE 43, 41.) Nothing had changed within that short span of time. I remain persuaded of my analysis of the issues.

Fed.R.Civ.P. 62(c) authorizes the trial court to grant an injunction pending an appeal of the denial of an injunction. The appellate court has the same power under Rule 62(g). “[A]n application with regard to an injunction ordinarily must be made in the first instance to the district court under Rule 62(c) and it is only if relief is not obtained there that the appellate court will consider acting under Rule 62(g).” Wright, Miller, et al., 11 Fed. Prac. & Proc. Civ. § 2904 (3d ed. 2013).

Notre Dame's cursory motion offers no new arguments, relying entirely on its briefing and oral argument in support of its earlier request for a preliminary injunction. (DE 42 at 2.) The same standard for preliminary injunctive relief is cited. *Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 461 (7th Cir. 2000). I have already concluded, after as thorough an analysis as I was able to muster, that the "low likelihood of Notre Dame's success on the merits tips the sliding scale towards denial of the preliminary injunction that Notre Dame seeks." (DE 40 at 39.) The same conclusion precludes my issuance of the requested preliminary injunction pending appeal. I will deny Notre Dame's motion, and the university is of course free to request the same relief from the Seventh Circuit.

CONCLUSION

Plaintiff University of Notre Dame's Motion for a Preliminary Injunction Pending Appeal (DE 41) is **DENIED**.

SO ORDERED.

ENTERED: December 23, 2013

/s/ Philip P. Simon
Philip P. Simon, Chief Judge
United States District Court